IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8131 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONNTROLLER

Versus

VIRJI D BAROT

Appearance:

MR KV GADHIA for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/03/2000

ORAL JUDGEMENT

1. Learned Advocate Mr. K.V. Gadhia is appearing on behalf of the petitioner Corporation and learned advocate Mr. J.S. Brahmbhatt is appearing on behalf of

the respondent workman. In the present petition, the notice has been issued by this court returnable on 7th March, 2000. When the matter was taken up for hearing, both the learned advocates requested this court to dispose of the said petition finally. With a consent to that, Rule has been issued today and Mr. Brahmbhatt is waiving the service of Rule on behalf of the respondent.

2. In the present petition, the petitioner Corporation has challenged the order passed by the Industrial Tribunal, Ahmedabad in Approval Application No.132 of 1996 dated 10th June, 1999. Both the learned advocates submitted that in the present petition, this court can examine the validity of the punishment imposed by the petitioner Corporation against the respondent workman and decide on merits, the question of penalty as if powers has been exercised under Section 11A of the ID Act. Therefore, both the learned advocates have given consent to this court to exercise the powers under Section 11A of the ID Act relying upon the decision of the Apex Court in the case of Workmen of Bharat Fritz Werner (P) Limited & anr. reported in 1990 (1) JT Page 305. According to both the learned advocates, considering the observations made by the Apex court under Section 11A in case of punishment for misconduct, it was requested by the parties that High Court may decide the matter without remitting it to the Tribunal and therefore it was open for the High Court to consider as to what would be the adequate punishment for misconduct. In the case cited above, the learned judges were of the view that the said acts of misconduct was not such as to deserve extreme penalty of dismissal and directed that these workmen should be taken back on duty but with one half of the backwages.

3. The learned judges considered the denial of one half of the backwages to the workmen as a sufficient punishment for the acts of misconduct committed by them. The aforesaid direction has been given by the High Court while exercising the powers which are exercised by the Industrial Tribunal in view of the Joint Memorandum dated 22nd June, 1984 submitted by both the parties whereby it was requested that the Court may decide the entire matter

without remitting it to the Tribunal and grant appropriate relief finally in accordance with law. Moreover, in view of the provisions contained in Section 11A of the Act which empowers the Industrial Tribunal to go into the question whether the order of discharge or dismissal passed against a workman is justified or not and permits the Tribunal to set aside the order of discharge or dismissal, as the circumstances of the case may require, it was open for the High Court to consider what would be the adequate punishment for the misconduct found to have been committed by these workmen and take the view that the act of misconduct proved against these 5 workmen was not such as to warrant dismissal and denial of one half of the backwages for the period of about 6 years was adequate punishment for the misconduct found to have been committed. In view of the above observations

made by the Apex Court before this court, both the advocates have submitted an oral request that this case can be considered by this Court under powers contained in Section 11A of the ID Act. Therefore, the request made by both the learned advocates has been considered and this court is now examining the merits of the matter without remitting back the said matter to the Industrial Tribunal, Ahmedabad.

4. The brief facts of the present petition is that the respondent workman was working as a Conductor with the petitioner Corporation. On 22nd March, 1996 his bus was checked by checking party at Badargarh road. The checking party found that the respondent workman has not issued tickets to three different groups of 10 passengers and collected the fares and in pursuance to the said chargesheet after completion of the departmental inquiry, the respondent workman was dismissed from service on 15th July, 1996. The petitioner Corporation had filed an Approval Application before the Industrial Tribunal, Ahmedabad wherein Reference (I.T.) No.108 of 1996 was pending. The said Approval Application was filed on 15th July, 1996 by the petitioner Corporation. Thereafter, the Industrial Tribunal has examined the prima facie case of the petitioner Corporation to prove that whether dismissal is justified or not and the allegations made against the respondent workman were found to be proved or not and whether principles of natural justice has been

violated or not. The Tribunal has considered the submissions of both the learned advocates and in paragraph 10 has come to the conclusion and has given reasons in support of its conclusion that the competent authority who is holding the departmental inquiry is in cross-examination. Some questions were asked to the Reporter by the Inquiry Officer and not only that, the Inquiry Officer has asked questions to the respondent workman on merits as if he was cross-examining the respondent workman. Therefore, the contention was raised before the Tribunal that the Inquiry officer was acting as a Presenting Officer though his role was prescribed and judged and therefore the departmental inquiry has been held against the principles of natural justice. In the present case, except the Reporter, no other witnesses were examined and according to the Tribunal, the petitioner Corporation has failed to prove prima facie case and has also not proved the fact that complete notice pay was paid to the respondent workman. Therefore, ultimately the Industrial Tribunal has rejected the Approval Application filed by the petitioner Corporation. Alongwith the petition, a copy of the Approval Application has been produced on record by the petitioner Corporation and a written statement filed by the respondent is also produced on record. Except that, no other documents has been produced by either party. The respondent workman has filed an affidavit in reply against the petition on 7th March, 2000. Learned

advocate Mr. Brahmbhatt submitted that the departmental inquiry was not legal and valid and the petitioner Corporation has not proved any evidence before the Tribunal to justify their inquiry and dismissal order. It is also necessary to consider the nature of work of the conductor while performing work in ST buses. This is also an important aspect which must be kept in mind while dealing with the conductor and while imposing the penalty on such conductors.

5. In this case, the misconduct for which the extreme punishment visited the worker is causing a very negligible loss to the employer. A serious question that arises in such cases would be, besides the legality of the punishment, the morality of imposing such a severe punishment as well. While imposing a punishment the employer should first consider whether the delinquent committed the offence with intent to make unlawful gain

and to pilfer the revenue of the employer. Was it with intention to gain 50 paise that the worker committed the present misconduct? Was he in such a depraved circumstance that he desired to make an illegal gain of a trivial amount of 50 paise? What was the number of passengers travelling in the bus and is it possible that he would have accidentally omitted to issue tickets? Is it not possible that while he was in the process of issuing tickets, the two persons might have boarded the bus? Several cases we come across, such omission takes

place in buses loaded with more than the permitted number of passengers. Such may be cases of human error committed by the Conductor while issuing tickets to passengers travelling in a bus with passengers much more than the permitted number. The disciplinary authority should keep in mind all facts of the problem before it awards the extreme penalty of dismissal.

6. A misconduct like the above on several instances is not committed insistentionally. It is too much to imagine that a worker would have omitted to issue tickets deliberately to gain few rupees at the risk of his job. More often, it is due to the crowd in the bus that he misses to issue tickets than a desire by him to gain few rupees. The castastrophe that may befall is more serious than what is sought to be prevented. First it visits the employee. He is rendered jobless. It generates a litigation which in the present pattern spreads over years producing ultimately a disgruntled employee. Actually the real victim of any such punishment is the family of the worker whose breadwinner is jobless. The future is rendered bleak to them and it in its turn causes greater hardship to the society than it intended to cure.

7. That apart, the management also shares the losses in another way. When the worker is dismissed, someone else will have to be placed in his place to discharge

the duties. And if the worker is ordered to be reinstated ultimately with backwages, virtually there will be double payment i.e. two persons, would have to be paid for a single job. In the case of a public sector undertaking, the loss is passed on to the common man, the

tax payer.

8. The question then would be in the case of a Conductor (as in the instant case) who has a past history, should the employer ignore the same? This is a case, the remedy for which the employer himself should discover and the solution is not far to discover. In the case of a ticketless traveller the management has designed a method to curb the same by imposing fine on them. The object with which this is done is so that he may not repeat travelling in the bus without tickets. This method can certainly be considered of imposing of penalty on the Conductor himself who is discovered to be intentionally pilfering the revenue of the Corporation.

9. We may notice that in all these cases of non-issue of tickets, we may take note of the fact that there are two parties joining to commit the misconduct, i.e., the Conductor and the passenger. If the Conductor wants to make an unlawful gain, then he has to collect the fare and fail to issue tickets. In such an event, the passenger who boards the bus must cooperate with the Conductor. If he has to cooperate, then he should be

familiar to the conductor and he should agree to be a party to commit the misconduct at the risk of paying penalty in the event of being caught by the inspecting staff. It is too much to imagine that the Conductor will hatch a conspiracy to pilfer revenue of the Corporation as and when stray passengers board the bus at various stages. If the Conductor wants to make an illegal gain by the omission to issue tickets, the passenger has to be condescending party. This is really unlikely. Hence, the benefit of doubt in cases of stray lapses should be that the omission to issue tickets may be accidental.

10. Hence, the disciplinary authority should reserve the punishment of dismissal only in extreme cases. It is where the exercise of discretion by the disciplinary authority steps in. It cannot and should not act like a robot, its justice should be moulded with humanism and understanding. It should really assess each case on its own merit. The fact that on a past occasion the delinquent might have acted in a particular manner does not mean that on the particular occasion as well he would have acted with intent to cause loss to the employer. Each set of facts should be decided with reference to

evidence regarding the said allegations and those allegations should be the basis of the decision. May be, the past conduct of the worker may be a ground to assume that the delinquent may have had propensity to commit the misconduct and to assess the quantum of punishment to be

imposed. But that by itself cannot provide any foundation to hold that the present conduct of the worker is a misconduct.

11. Considering the submissions of both the learned advocates, I have perused the order passed by the Industrial Tribunal. The facts remained that the bus was checked on 22nd March, 1996 and the checking report was submitted after a delay of 13 days wherein the charge was not levied against the respondent workman about dishonesty, misappropriation in respect to the property of the Corporation and in which the allegations made against the respondent workman about Clause 22 which relates to repeated breach of administrative circular and Clause 27 which relate to the repeated negligence of the respondent workman. It is also proved from the record that the departmental inquiry has been completed within one day and no documents have been supplied to the respondent workman. There is a clear finding of the Tribunal that the departmental inquiry is vitiated as it violated principles of natural justice.

12. Considering the fact that there were allegations against the respondent workman that from the group of 10 passengers though fare was collected, but no tickets were issued but according to Mr. Brahmbhatt the charges of dishonesty and misappropriation were not levied against the respondent workman and merely it was considered to be

a technical breach of administrative circular and negligence. Therefore, the punishment of dismissal in the light of the misconduct in question is harsh and unjustified. According to the misconduct in question, the competent authority has to consider while imposing the penalty of dismissal to consider certain relevant aspects about the socio-economic background of the workman, family background of the workman, length of service and compelling circumstances of committed misconduct and past record. These are the relevant

considerations before imposing any punishment by the competent authority against any workman which has been held by the Division Bench of this court reported in 1994 2 LLJ Page 1113. Keeping in mind the said principles, when there was no charge against the respondent workman in relation to dishonesty and misappropriation under Clause 12B of the ST Discipline Procedure and it is merely a breach of administrative order and negligence, then according to my opinion the punishment of dismissal in such cases is definitely harsh, disproportionate and unjustified. The competent authority has not considered while imposing the penalty the length of service, past record, compelling circumstances and gravity of misconduct. Therefore, according to my opinion the punishment of dismissal is unjustified, harsh and disproportionate considering the gravity of misconduct in question. Therefore, if the backwages of interim period from 15th July, 1996 to the date of order passed by the

Tribunal i.e. 10th June, 1999 is denied or the said amount of backwages is withheld considering it as the appropriate punishment for breach of administrative orders and negligence which has been found to be proved against the respondent then it will be considered to be an appropriate, adequate and just punishment. Therefore, considering these aspects and in my opinion, the dismissal order passed by the petitioner Corporation dated 15th July, 1996 against the respondent workman is required to be quashed and set aside and it is directed to the petitioner Corporation to reinstate the respondent workman in service with continuity of service without backwages of interim period from 15th July, 1996 to 10th June, 1999 and the respondent workman is entitled to full wages from 10th June, 1999 till the date of actual reinstatement in service. Therefore, the order passed by the Industrial Tribunal dated 10th June, 1999 in Approval Application 132 of 1996 has been modified to that extent while exercising the powers under Section 11A of the ID Act and the powers under Article 226 and 227 of the Constitution of India. In the result, I direct the petitioner Corporation to reinstate the respondent workman in service within a period of four weeks from the date of receiving a certified copy of the said order and to pay full wages from 10th June, 1999 till the date of actual reinstatement within a period of six weeks from the date of receiving a certified copy of the order.

Accordingly, the said petition is partially allowed. Rule made absolute to that extent. No order as to costs.

(H.K. Rathod, J.)

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